

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2020] NZERA 479  
3078714

BETWEEN                      TODD LONGSON  
   Applicant

AND                                      INSIGHT NEW ZEALAND 2007  
   LIMITED  
   Respondent

Member of Authority:              Philip Cheyne

Representatives:                      Jeff Goldstein and Linda Ryder, counsel for Applicant  
   Tim McGinn, counsel for Respondent

Submissions received:              13 October 2020 from Applicant  
   27 October and 16 November 2020 from Respondent

Determination:                          23 November 2020

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**COSTS DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY**

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**A. Insight New Zealand 2007 Limited is to pay Todd Longson costs of \$4,571.56.**

[1]     In my determination dated 24 September 2020 I found that Mr Longson had a personal grievance and ordered Insight New Zealand to pay Mr Longson compensation and reimbursement. I reserved costs. Submissions have now been received from counsel. The applicant's submissions referred to an attachment but it was not included. Counsel later provided the attachment in response to my request. The respondent was given and took an opportunity to comment on the attachment once it was provided. This determination resolves the issue of costs.

[2] The Authority has discretion to order a party to pay costs. The discretion must be exercised in accordance with principle. The Authority has adopted and publicised a daily tariff approach as the starting point for considering costs. Good reason is required to depart from the known tariff approach.

[3] The applicant was not entirely successful. His claim of being unjustifiably disadvantaged was unsuccessful. His claim for a penalty for breach of good faith was unsuccessful. His claim for reimbursement met with limited success, substantially because of the operation of the statutory prohibition on awarding compensation for loss arising directly or indirectly out of personal injury covered by the Accident Compensation Act 2001. While the successful unjustifiable dismissal claim also canvassed the events which were advanced in support of the disadvantage and penalty claims, focus on the successful claim would have reduced time and cost, at least to some extent. Nonetheless, Mr Longson is entitled to costs as he was substantially the successful party.

[4] The respondent accepts liability for costs but says it should be limited to the daily tariff for one day. I accept that the meeting might have ended on the first day, but for circumstances not attributable to the respondent, we finished more than an hour early then and resumed a week later. We spent approximately 2½ hours on the second day. If I adopt a daily tariff approach, I would assess that a single day properly reflects the time spent and the applicant's success.

[5] The applicant submits that costs should exceed the tariff. The applicant was dismissed in January 2019. There was a *Calderbank* offer from the applicant on 27 June 2019, open for acceptance until 8 July 2019. The applicant sought settlement of \$10,000.00 compensation and \$10,000.00 (plus GST) in costs. The applicant said he would seek full indemnity for costs after 8 July if he matched or bettered that offer in the foreshadowed proceedings. The offer was rejected. Proceedings were commenced in October 2019. Following investigation, I ordered the respondent to pay Mr Longson more in compensation and reimbursement than the entire settlement offer. The submission is that the respondent unreasonably rejected the *Calderbank* offer. I am asked to order the respondent to pay \$12,000.00 (plus GST) in costs. Counsel says that the applicant incurred costs of \$26,097.50 (plus GST) after 8 July 2019.

Counsel says that the applicant's actual costs were \$30,000.00 (plus GST). The submission is that these were reasonable costs in the circumstances.

[6] In response to the submission that the respondent unreasonably rejected the settlement offer, counsel argues that the costs component of the offer was significantly inflated. The costs claim was given as the reason for rejecting the settlement offer. Counsel says that the rejection of the *Calderbank* offer was not unreasonable. There is a submission that the time records show chargeable time at the date of the *Calderbank* offer as \$3,912.50 (plus GST), a bill of \$2,492.50 (plus GST) on 30 November 2019 and no invoice since. Counsel points out that invoiced costs are not the same as costs indicated by time records.

[7] In *Tolson v Potter*<sup>1</sup> the Employment Court confirmed that if a party's decision to decline a *Calderbank* offer was unreasonable, that is likely to justify an uplift in costs. Here, the respondent cannot be said to have acted unreasonably in rejecting the *Calderbank* offer for the reason it expressed at the time. The respondent disputed that costs of the sum claimed could have been incurred, given that no proceedings had been commenced. The time records support the respondent's position. It follows that the applicant has not made out sufficient grounds for me to depart from the standard daily tariff approach to assessing costs.

[8] As above, there will be an order for one day. The standard rate is \$4,500.00. I am asked also to add the application fee of \$71.56 and \$306.66 for hearing fees. No award for hearing fees can be made. Hearing fees have not been charged given the early finish on the first day and the limited time occupied on the second day. There will be an order to cover the application fee. The total award will be \$4,571.56.

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<sup>1</sup> [2020] NZEmpC 130.

[9] I am asked to note that the applicant is not GST registered and an order was sought on a plus GST basis. The daily tariff does not distinguish between those who are or are not GST registered.

Philip Cheyne  
Member of the Employment Relations Authority